THE RECORD

OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

VOLUME THIRTEEN

1958

THE RECORD of The Association of the Bar is published at 42 West 44th Street, New York 36. Editorial inquiries should be addressed to the Executive Secretary. Information on exchange arrangements may be secured from the Librarian of the Association.

THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

LOUIS M. LOEB, *President* — PAUL B. DE WITT, *Executive Secretary* — ROGER BRYANT HUNTING, *Secretary*

THE RECORD is published at the House of the Association, 42 West 44th Street, New York 36.

Volume 13 — JANUARY 1958 — *Number* 1

Association Activities

AT THE December Stated Meeting proposals for changes in the dues paid by certain classes of members were discussed. Because of the subway strike and other considerations, action on these proposals was deferred.

At the December meeting the following resolution was proposed by John F. Dooling, Jr., Chairman of the Committee on Courts of Superior Jurisdiction, and adopted:

WHEREAS, the administration of the Courts has been receiving increasing public notice and attention, and certain appointments to Court positions have recently received widespread public criticisms, and

WHEREAS, there is a vacancy in the position of County Clerk of New York County which is shortly to be filled, it is

RESOLVED that it is desirable to appoint as County Clerk, New York County, a person qualified to discharge the duties of that office by training and experience as a lawyer or in the administration of the Courts, or a person who qualifies under any applicable standards respecting such appointments that may be formulated by the Judicial Conference, and who is prepared to devote his full time to that office, to the end that the New York County Clerk's office, the operations of which are closely identified with the work of the Supreme Court, New York County, may be so conducted as to

contribute affirmatively to the improvement of the administration of justice in that Court.

An interim report was presented by Chester Rohrlich, Chairman of the Committee on Corporate Law.

THE FOLLOWING LETTER, addressed to the President by former Presiding Justice David W. Peck, comments on the panel of volunteer lawyers recruited by the Association's Committee on Legal Aid, of which J. Kenneth Campbell is Chairman:

"Dear Louis:

"Before I leave these parts, I want to express the deep appreciation of the court for the splendid work the members of the Bar Association are doing on the criminal appeals for indigent defendants. While the brunt of this work is being borne by the Legal Aid Society in admirable fashion, it is equally gratifying to have the participation of the Bar Association in the program.

"These appeals are being handled most competently by counsel and with all the ability and care which could possibly be given to a case for a private client. All of the members of the court are pleased with and proud of the professional performance of assigned counsel.

"Would you please convey to the members of the Association who have participated and will participate in this program the combined admiration and appreciation of the court.

Sincerely yours,

/s/ David W. Peck"

THE ASSOCIATION'S Photographic Exhibition will open on March 20, 1958. The Art Committee, Alexander Lindey, Chairman, is making a drive to obtain as many exhibitors as possible. As the exhibit will be one by lawyers and not by professional photographers, emphasis will be placed on the number of contributors

rather than on the quality of the contributions. It is only by broadness of representation that the exhibit can be of real service to the Association and its members.

THE UNIVERSITY of Pennsylvania Law School won the Eighth Annual National Moot Court Competition, the finals of which were held on December 20, 1957. Ninety-four law schools participated. The case argued involved issues relating to industrial personnel security. The final court was presided over by Judge Charles S. Desmond of the Court of Appeals of the State of New York. Other members of the court were The Honorable Warren E. Burger, Judge of the United States Court of Appeals for the District of Columbia Circuit; The Honorable Horace Stern, former Chief Justice of the Supreme Court of Pennsylvania; Paul R. Hays, Professor of Law, Columbia University School of Law; and George A. Spiegelberg, a Vice President of the Association. The Harrison Tweed Bowl for the best brief in the final rounds of the competition was awarded to Washington & Lee University School of Law. The John W. Davis Cup, donated by the American College of Trial Lawyers, was awarded to the University of Pennsylvania team. J. Harold Flannery of Pennsylvania received the prize for the best individual oral argument and Charles W. Willey of Montana State University Law School was the runner-up. Honorable mention went to the team from the Montana State University Law School, which lost to the Pennsylvania team. Other prizes won by the championship team included a silver cup in honor of Judge John C. Knox and an award of $500 named for William J. Donovan. Book awards were made to all teams participating in the final rounds by publishers of law books. Teams participating in the final rounds were the victors of regional competitions held in November among 94 of the nation's 128 accredited law schools.

THE ANNUAL Twelfth Night Party, sponsored by the Committee on Entertainment, Eugene A. Leiman, Chairman, was an out-

standing success. The party was in honor of former Presiding Justice David W. Peck.

THE LECTURE, "The Secured Creditor at the Crossroads," given by Jack J. Levinson before the Section on Banking, Corporation and Business Law, Charles H. Willard, Chairman, has been published in the September, 1957 issue of The Banking Law Journal.

THE COMMITTEE on Labor and Social Security Legislation, Emanuel Dannett, Chairman, issued the following statement to the press in connection with the approval of the Committee's report with recommendations concerning the no-man's land between state and federal labor board jurisdiction:

"Expansion of the budget of the National Labor Relations Board so as to enable it to exercise the full measure of its jurisdiction was recommended by the Committee on Labor and Social Security Legislation of The Association of the Bar of the City of New York in a report just issued by that committee.

"Emanuel Dannett, Chairman of that Committee, announced that the report had been approved by the Executive Committee of the Association.

"In the area of federal-state jurisdiction in labor disputes affecting commerce, a vacuum has been created as a result of the refusal of the National Labor Relations Board to accept jurisdiction in certain cases and the holding of the United States Supreme Court in the Guss case that the state labor relations boards could not act in those cases where the N.L.R.B. had declined jurisdiction.

"The complete recommendations of the labor committee of the Bar Association were: (1) Congress should expand the budget of the N.L.R.B. so as to enable it to exercise the full measure of its jurisdiction; (2) legislation should be enacted by Congress making it mandatory for the N.L.R.B. to exercise its full jurisdiction as provided in the Labor Management Relations Act, 1947, in any matter affecting commerce; and (3) pending the enactment of the foregoing legislation, the N.L.R.B. should revise its jurisdictional standards downward to the extent of its budget limitations, to remove as many cases as possible from 'no-man's land.'

"The committee's report opposed returning the no-man's land area to state control upon the ground that it would promote conflict between federal and state laws and would result in the application of non-uniform laws of the states to labor matters affecting interstate commerce.

"The report further pointed out that permitting state boards to act where

gaps existed would be an inadequate remedy since only twelve states have comprehensive labor legislation.

"Dealing with the same problem, Labor Secretary James P. Mitchell, in his address before the A.F.L.-C.I.O. Convention, stated that it was his recommendation that the jurisdictional gap should be closed by authorizing states to act with respect to matters over which the N.L.R.B. declines to assert jurisdiction."

AT A JOINT meeting of the Committee on Foreign Law, James N. Hyde, Chairman, and the Committee on International Law, John R. Stevenson, Chairman, Professor Wolfgang Friedmann spoke on the study of joint international business ventures, which is in progress at Columbia University under Professor Friedmann's directorship.

ARTHUR N. SEIFF, Chairman of the Committee on Medical Jurisprudence, issued the following statement summarizing the recommendations of his Committee in regard to narcotics addiction:

"The Committee has urged a three-pronged attack on the problem:

"1. The Committee has recommended that a new narcotics hospital be established in the New York region for mandatory hospitalization, rehabilitation and aftercare of drug addicts. At the present time the nearest federal narcotics hospital is at Lexington, Kentucky.

"2. The Committee also recommends a compact be formed between the Federal Government, New York State and New Jersey and such other neighboring states as have a significant addiction problem. The compact would establish a narcotics control agency with authority to build a hospital. The state courts of the members of the compact would have the right of commitment to the hospital. The agency would also have the right of parole supervision of persons committed to its care by these courts. Voluntary commitment would become compulsory upon execution of the voluntary commitment before an appropriate official of the agency. The agency would also have the authority to maintain and continue research. The following safeguards were also recommended:

(a) That proper provisions be made to protect the rights of a voluntary submittant, to the end that he not be kept in custody unduly;

(b) That appropriate release procedures be made available, together with provisions for judicial review thereof;

(c) That there be automatic reviews at reasonable intervals;

(d) That a person committed, even if voluntarily, must remain for a reasonable time.

"3. In addition the Committee urged that Congress appropriate more funds to prevent illicit importation and distribution of narcotics."

WITH the approval of the Executive Committee, the Committee on Patents, Furman Rinehart, Chairman, filed with the Commissioner of Patents a statement that the Committee favored a proposal to amend Rule 345 of The Rules of Practice of the U. S. Patent Office to read as follows:

"Advertising. (a) The use of advertising, circulars, letters, cards, and similar material to solicit patent business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent Office or may be suspended, excluded or disbarred from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories shall not be considered a violation of this rule.

(c) No agent shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent Office, represent himself to be an attorney, solicitor or lawyer."

The Calendar of the Association for January and February

(As of January 3, 1958)

January 6 — *Twelfth Night Party.* Sponsorship Entertainment Committee

January 7
- Dinner Meeting of Committee on Federal Legislation
- Dinner Meeting of Committee on Legal Aid
- Dinner Meeting of Committee on Administrative Law
- Dinner Meeting of Committee on International Law

January 8
- Dinner Meeting of Executive Committee
- Meeting of Section on Wills, Trusts and Estates

January 9
- Dinner Meeting of Committee on Trade Marks and Unfair Competition
- Dinner Meeting of Committee on Aeronautics
- Dinner Meeting of Special Committee to Study Passport Procedures

January 13
- Dinner Meeting of Committee on Medical Jurisprudence
- Dinner Meeting of Committee on Professional Ethics
- Dinner Meeting of Committee on the Bill of Rights
- Meeting of Section on Trade Regulation
- Meeting of Special Committee to Cooperate with the International Commission of Jurists

January 14
- Dinner Meeting of Committee on Insurance Law
- Dinner Meeting of Committee on State Legislation
- Dinner Meeting of Committee on Corporate Law
- Joint Meeting of Sections on Administrative Law and Procedure and Banking, Corporation and Business Law

January 15
- Meeting of Committee on Admissions
- Meeting of Section on Litigation
- Dinner Meeting of Committee on the Domestic Relations Court
- Dinner Meeting of Committee on Courts of Superior Jurisdiction
- Meeting of Committee on Arbitration

January	16	Dinner Meeting of Special Committee on Military Justice
January	20	Meeting of Library Committee
January	21	*Stated Meeting of the Association, 5:00 P.M. Buffet Supper, 7:15 P.M.* Meeting of Committee on State Legislation
January	22	Meeting of Section on Jurisprudence and Comparative Law Dinner Meeting of Committee on Foreign Law
January	23	Dinner Meeting of Committee on the City Court of the City of New York Dinner Meeting of Special Committee to Study Passport Procedures Joint Meeting of the Committee on Trade Regulation and the Section on Trade Regulation
January	28	Meeting of Committee on State Legislation
January	29	New York State Bar Association Food, Drug and Cosmetic Law Section New York State Bar Association Banking Law Section
January	30	New York State Bar Association Anti-Trust Law Section
January	31	New York State Bar Association Annual Meeting
February	1	New York State Bar Association—Annual Meeting
February	3	Meeting of Committee on State Legislation Dinner Meeting of Committee on Professional Ethics Dinner Meeting of Section on Banking, Corporation and Business Law
February	4	Dinner Meeting of Committee on International Law
February	5	Meeting of Section on Wills, Trusts and Estates Dinner Meeting of Executive Committee
February	11	Meeting of Committee on State Legislation Meeting of Committee on the Domestic Relations Court Dinner Meeting of Committee on Courts of Superior Jurisdiction Dinner Meeting of Committee on Federal Legislation

February 13	Meeting of Section on Trade Regulation Dinner Meeting of Committee on Trade Marks and Unfair Competition Dinner Meeting of Committee on Foreign Law Dinner Meeting of Committee on the Bill of Rights
February 17	Meeting of Library Committee Meeting of Section on Labor Law Dinner Meeting of Committee on Medical Jurisprudence
February 18	Meeting of Section on Taxation Meeting of Committee on State Legislation Dinner Meeting of Committee on Insurance Law
February 19	Meeting of Committee on Admissions
February 25	Meeting of Committee on State Legislation
February 26	Meeting of Section on Litigation Dinner Meeting of Committee on Legal Aid

The President's Letter

To the Members of the Association:

The membership will be interested, I believe, in being apprised of the latest step taken by the Executive Committee to implement the recommendations made in the report of Cresap, McCormick and Paget.

I have been authorized and directed to appoint a special committee, to be known as the Management Committee, consisting of a Chairman and five members (two of whom shall be the President and the Treasurer), which Committee will have the duty of supervising and coordinating the budgeting and expense control functions of the Association. In general, this Committee will exercise supervision, subject of course to the direction of the Executive Committee, over the management of the Association.

I have appointed as the members of this new and very important Committee, besides Dean K. Worcester, the Treasurer and myself as President, Albert R. Connelly, the Chairman of the Executive Committee; Orison S. Marden, a member of the Executive Committee of the Class of 1960; Lewis M. Isaacs, Jr., Chairman of the House Committee and the Bar Building Committee, and Theodore Pearson, Chairman of the Library Committee.

I expect that the key department heads, such as the Executive Secretary, the Administrative Manager, the Librarian, and the Chief Attorney for the Grievance Committee, will sit in with the Committee and advise in its deliberations and the formulation of decisions.

I have every confidence that this will prove to be another big step in the direction of improved management and more efficient team administration of the Association's affairs.

LOUIS M. LOEB

December 16, 1957

Significant Differences Between English and American Practice

By THE HONORABLE CHARLES E. MURPHY
Associate Justice, Appellate Division
Supreme Court, Second Department

Although the English system of common law has been adopted and followed generally in the United States, many differences exist between the legal and judicial procedures and practices of the two countries. This country, as does England, follows the doctrine of *stare decisis;* that is we, as do the English, honor precedent as established by our higher courts as the ruling law. The decisions of the Supreme Court of the United States are respected here as the law of the land the same as the determinations of the House of Lords, England's highest court, are honored in that country.

The organization of the courts in England is not dissimilar from that followed in America. The criminal courts from top to bottom are as follows:

The House of Lords
The Court of Criminal Appeal
The Assize Courts (in London Old Bailey)
The Court of Quarter Sessions
The Court of Petty Sessions

The civil courts in England are, from top to bottom, as follows:

The House of Lords
The Court of Appeal

Editor's Note: Judge Murphy delivered this address before the Section on Litigation, Edward C. McLean, Chairman, of the Committee on Post-Admission Legal Education. The material for the address was obtained mainly during the summer of 1957 when Judge Murphy took a six week course at the Law School of the University of London on the subject "History of English Law and its Modern Tendencies." In connection with the course Judge Murphy visited and studied many of the courts in London.

The High Court, divided into
(1) Queens Bench Division
(2) Chancery Division
(3) Probate, Divorce and Admiralty Division
The County Court

The two systems diverge, however, when it comes to procedure and practice and this fact may be illustrated by the following differences:

STARE DECISIS

(1) The first great difference in our two systems lies in the fact that in England the courts follow the doctrine of *stare decisis* much more faithfully and rigidly than we do in this country. Only a fortnight ago I heard the illustrious Dean Emeritus of Harvard Law School, Roscoe Pound, state at the Brooklyn Bar Association that the English courts strive mightily for certainty in the law.

From this very platform William Dwight Whitney, illustrious American lawyer and former Special Assistant to the Attorney General, stated as follows:

> "In England equity means a body of rules, developed in all their essential outlines more than a century ago, on particular subjects. There is no idea that the judge could change a rule or develop a new one in order to do what an American Judge would call 'equity.'
>
> "But there is, after all, a real value to the ordinary layman in knowing where you are with the law. The English Courts and lawyers still hold absolutely to the conception that it is better that the law be sure than that it be right. It is an unbreakable rule that courts cannot reverse themselves or overrule prior decisions except of lower courts."

In contrast with this strict adherence to the principle of *stare decisis* in England, it is generally accepted by the legal fraternity here that appellate courts in this country have diluted their strict

observance to the doctrine of *stare decisis*, often making it difficult if not impossible for attorneys to advise their clients as to the exact status of the law in certain fields.

JURY TRIALS

(2) There is generally no constitutional or statutory right to a jury trial in civil actions in England, while here a litigant's right to a jury trial in civil as well as criminal matters is established constitutionally. A party's right to a jury trial in a so-called negligence action, for instance, is one of the prime causes for calendar congestion in our Supreme Court in New York State. The backlog of untried cases here is due solely to the demand for jury trials in automobile accident cases. In England no such congestion exists because jury trials are seldom if ever had in so-called negligence litigation. There a plaintiff or defendant must apply to the court if he desires a jury trial and such application is seldom granted. The members of the Bar know this and hence seldom make a motion for a trial by jury in a negligence action, which cases in England are usually tried by a judge without a jury with the result that litigation is disposed of with great dispatch. An exception is made in England in cases involving defamation of character, fraud, malicious prosecution, false imprisonment, seduction and breach of promise to marry, which are usually tried before a jury if either litigant makes such a demand.

In 1953 out of 1217 cases heard in the High Court only 52 were tried by jury and these included those cases where either party was entitled to demand a jury trial.

I am not an advocate of the abolition of jury trials in civil matters and therefore record the above facts simply to point out the differences in the English and United States procedure regarding jury trials.

ADMINISTRATIVE AGENCIES

(3) Recourse to the courts for relief from the determinations of administrative agencies is seldom had in England. The courts

there will not reverse or upset such determinations unless they are shocking to natural justice, which remains a rather vague term in English jurisprudence. Here, however, our courts have a substantial amount of litigation in which parties are seeking reversal of the determinations of such administrative agencies as zoning boards, rent or housing commissions, the Bureau of Motor Vehicles, the Alcoholic Beverage Control Board, etc. Our courts will reverse the rulings of such agencies if they are arbitrary, capricious, unreasonable or illegal. If the findings of fact on which the ruling of an administrative agency rests are not adequately set forth, our courts will, as a rule, remit the case to the offending agency so that the facts on which the decision is based may be clearly and adequately stated.

Appeals to our courts for relief from the determination of zoning boards are particularly numerous, especially from litigants in small towns which have more or less recently adopted zoning laws. In England where zoning is now on a national rather than a local basis, the courts have been inclined to leave the determination of the zoning authorities untouched unless gross injustice is obvious. Parenthetically, the Act of Parliament establishing a national zoning statute is so far removed from the American conception of zoning law as to call for a special article discussing the matter.

CRIMINAL APPEALS

(4) An appeal from the Court of Criminal Appeal to the House of Lords in a criminal matter must first be approved by the Attorney General of the realm in England, and he may approve leave to appeal to the House of Lords only if there is a point of law of exceptional public importance. That requirement is difficult of comprehension to the American jurist or attorney as here the only right of an Attorney General or District Attorney is to oppose an appeal in a criminal case on grounds selected by him. He has no right of veto as the Attorney General of England has. The philosophy behind this practice seems to be that a defendant in a criminal matter had sufficient protection once he has pursued his appeal in the Court of Criminal Appeal.

NO WRITTEN BRIEFS

(5) Appeals to the Court of Appeal and House of Lords are presented without written briefs of any kind by the attorneys. Such a procedure in America is unheard of. Barristers appearing in the appellate courts in England present their entire case orally and are not limited in their time as they usually are here. They read entire opinions to the members of the court. Members of the court at times suggest that a barrister curtail his reading of a case particularly well known to the court, but generally no interruption is made except by questions put to the barrister during argument by the court.

In our appellate courts printed briefs are presented in practically all cases by both counsel for the appellant and the respondent. Exceptions are made in this regard only when an appeal has to be expedited with all possible haste or where an appellant has made application to appeal without printed briefs on the basis of destitution. The briefs submitted in our appellate courts contain a statement of facts, a discussion of the applicable cases and a conclusion recommended to the court. At times even reply briefs are permitted. This procedure is in contrast to the complete orality of the appeals heard in England.

In this connection it is significant to note that the Court of Appeal in England hands down its decision from the bench immediately after the close of argument in most cases. Such a practice is rare in our appellate courts which invariably reserve decision pending further study of the matter presented. In some of our appellate tribunals each case is reported in writing in detail by one judge to his colleagues. Such report is concluded with a recommendation as to the disposition of the subject appeal. If there is a dissent from any member of the court the case on appeal is thoroughly discussed and vote taken thereon at consultation. As indicated above no such practice exists in England; most cases being decided promptly from the bench except when there are particularly complex matters.

The record of a trial is not as a matter of course printed or typewritten for presentation to the Court of Appeal in England.

In New York State the entire record of every trial is printed or typewritten for examination by the appellate courts.

LOSING LITIGANT PAYS HEAVY COSTS

(6) A litigant in England faces the possibility of heavy costs in the event he loses for he not only has to pay his own barrister and solicitor plus the statutory costs but also must pay the counsel fees of his successful adversary. These fees may be substantial as they include the remuneration of the successful solicitor as well as the successful barrister. We have no such provision for the payment of costs by the losing party in New York State. Costs here are limited to those provided by statute plus the disbursements of the successful party, but do not include payment of the fees of the successful party's attorney.

NO NEW TRIAL IN CRIMINAL CASES

(7) In England a new trial is never ordered in a criminal case by the Court of Criminal Appeal. The judgment of the court of original jurisdiction is either affirmed or reversed. Our appellate courts on the other hand frequently direct a new trial in a criminal matter especially where there is substantial error in the charge of the court to the jury or where the defendant has been materially prejudiced by the summation of the prosecutor or in some other way.

NO CONTINGENT LEGAL FEES

(8) Contingent legal fees are not permitted in England and the Inns of Court as to Barristers and the Law Society as to solicitors would probably take disciplinary action against any attorney taking a case on a contingent basis. This is in marked contrast to our practice in America.

LITTLE LABOR LITIGATION

(9) The courts of England as a matter of policy have refrained as much as possible from intervening in labor disputes while the courts of our country have not hesitated to assume jurisdiction

in labor matters unless forbidden by statute. This is attributed to the fact that labor unions and management in England have endeavored to run their own show without recourse to the courts except in extraordinary cases. There is no such law as the National Labor Relations Act in England, even though it is felt that the unions could have had such legislation for the asking when the Labor Government was in control of the country for five years. The philosophy of the courts in regard to labor management relations seems to be to avoid judicial action except where it is utterly unavoidable.

NO POWER ON UNCONSTITUTIONALITY

(10) The House of Lords does not have the power to declare an enactment of Parliament unconstitutional. This is in contrast to the power of the Supreme Court of the United States to declare an Act of Congress unconstitutional. In *Lee* v. *Hude & Torrington Rly.* the House of Lords said:

> "Acts of Parliament are the law of the land. We do not sit as a Court of Appeal from Parliament."

DISSATISFACTION WITH BAR ORGANIZATION

(11) One may report with a fair degree of authenticity that there is considerable dissatisfaction in England with the present organization of their Bar. The legal profession there is divided into two distinct branches—the barrister and the solicitor. The barrister is the only advocate who may present cases in the high court and the appellate courts. He must be retained by a solicitor and is not allowed to contact the client except through his solicitor or even interview witnesses. He must obtain all information regarding a case exclusively from the solicitor who retained him and who, incidentally, is the one who pays him his fees.

The road to success for the English barrister is a rugged one because he first must establish his reputation as an effective advocate before he gains any degree of financial and professional attainment. The average annual income of an English barrister

is approximately $2,400 or about 850 pounds. Sixty percent of those admitted as barristers in the Inns of Court have left the profession at the end of five years. This is a high mortality and obvious waste of legal talent, even though many of those leaving the Bar employ their legal knowledge in some kind of governmental or corporate work. A further difficulty to the barrister is that he may not form a partnership with his fellow barristers.

A solicitor in England is handicapped by his unavailability for trial work in the superior courts as he must always retain a barrister for this purpose.

SUPPORT FOR PRESENT SYSTEM

One gathers that those who have achieved success among both the barristers and the solicitors are satisfied with things as they are but one would have to close his ears not to know that the rumblings of dissatisfaction regarding the present set-up of the English Bar are persistent and vocal.

AMERICAN TRIAL BAR EFFICIENT

It has been urged upon me by eminent American lawyers that the barristers of England are superior to the members of our own trial bar. This I am unwilling to admit although I recognize the rare talents of many English Barristers, some of whom I saw in action. We in our country have a barrister system without recognizing it. It is said that 60% of the commercial legal business in New York City is done by 30 large law firms which have the leading banks, insurance companies and corporations as their clients. These firms have from 15 to 25 attorneys in their litigation divisions, the older and more experienced of whom are expert trial counsel. No important case is ever tried by an amateur and the attorney who does try a vital matter is, in my opinion, the equal in ability of any British barrister. Particular trial counsel from outside firms are often engaged because of their peculiar knowledge of the subject-matter.

One may name scores of American specialists in negligence

trial work whose knowledge of jury technique, the rules of evidence, the human anatomy and medical terms and their significance places them in the category of very capable trial counsel. There are many able and effective trial counsel associated with the smaller firms in New York City and they are constantly winning important cases in our trial and appellate tribunals. One may conclude with safety that the situation as it exists in New York is duplicated in other communities on a relative basis throughout the country.

MUCH TO LEARN FROM EACH OTHER

It would be unwise to venture the opinion to the effect that the English judicial and legal system is superior to our own or that ours is superior to that of England. We have much to learn from each other and English jurists and attorneys alike are frank in stating this belief. One cannot attend and observe the English courts in action without being impressed with their manifest dignity, the complete objectivity and learning of the judges, the obvious talents of the barristers and, especially, with the attitude of great respect, even reverence, which the general public exemplifies towards the courts. The judicial and legal fraternities of England are the rigid followers of tradition and consequently are slow to adopt changes and innovations. They seem to feel that what has worked so well and fairly for generations should be altered only after long and careful consideration. Through the very necessities of the situation we in the United States have had to consider far-reaching innovations in order to meet the demand of the monumental volume of litigation in our many varied fields.

LEGAL EDUCATION

Following Judge Murphy's address a question was asked by Rev. Joseph Tinnelly, C.M., Dean of St. John's University School of Law, regarding the system of legal education followed in England. Judge Murphy's response was as follows:

FOR SOLICITORS

Legal education in England is not a post-graduate study. Students enter law school at the age of 16, 17 or 18. If they do not have a Law School degree they have to serve 5 years of clerkship in a solicitor's office and will be admitted upon passing the intermediate and final examinations for solicitor. A person with a degree from a law school, however, has to serve in a solicitor's office *only* three years and he is exempt from the solicitor's intermediate examination.

FOR BARRISTER

A person may become a barrister by joining one of the Inns of Court upon leaving high school or prep school at the age of 17 or 18. He is entitled to be called to the Bar after three years provided he passes part I and Part II of the final examinations for the Bar and provided he is twenty-one. Many people study for a law degree at the same time they are reading in a barrister's office.

LEGAL AID IN ENGLAND

Another question was asked by William Mulligan, Dean of Fordham University School of Law, regarding the English system of legal aid. Judge Murphy's response to this question was as follows:

Legal aid in England is subsidized by the Government. Legal aid in criminal matters is provided by the Poor Persons' Defense Act of 1930.The legal expenses of a trial and the fees for the solicitor and barrister in a criminal case are paid out of local funds. A legal aid or defense certificate must be granted by the Magistrate at the hearing of the case wherever justice so requires and *must* be granted particularly in murder trials.

LEGAL AID IN CIVIL CASES

Provision for legal aid in civil cases was provided by an Act of Parliament in 1949. Two questions are asked in determining whether legal aid shall be granted: (1) is the action or defense justifiable; (2) is the applicant financially capable of conducting

the case himself. Legal Aid Committees of barristers and solicitors decide the first question. The National Assistance Board decides the second question.

If applicant's disposable income is more than 420 pounds or he has disposable capital of more than 500 pounds he cannot get legal aid.

If disposable income is more than 156 pounds or his disposable capital exceeds 75 pounds he must contribute to the costs. If applicant wins the State takes its expenses out of his recovery. If he loses the Fund pays the costs and the attorneys' fees.

Since the inception of legal aid in civil matters up to March 31, 1956 there have been 160,253 legal aid certificates granted. In the same period the amounts recovered have been: Assisted persons contribution 3,536,000 pounds; costs awarded to assisted persons 2,688,000 pounds; damages awarded to assisted persons 8,815,000 pounds.

"Trial by Jury"—A Review*

By A. Edward Gottesman

When I was a student in college, I used to carry a slim book in my pocket almost anywhere I went, and take it out to read in a quiet moment on a walk through the park, or if it were the right book, in the intermissions of the Friday afternoon symphony concerts. In all that time I never read anything about the law, and it was certainly in spite of this habit, rather than because of it, that I went on to law school. There I learned the student maxim that law books are sold at a dollar a pound and seldom fetch under ten.

Had Sir Patrick Devlin delivered and published his series of Hamlyn lectures, given at the University of London in 1956, while I was still in college, I not only might have had some good reason for going to law school, but might have had a fair grounding in some of the fundamentals of the judicial process when I got there. Devlin's series, entitled "Trial by Jury," is a well-conceived, factually-executed explanation of the history and status of the unique distinguishing factor of Anglo-American law, the jury system. The conception of the lectures is striking because, as Devlin says in the Introduction, "These lectures then are addressed to the common people, or to such of them as are interested in the way that justice is done, and I hope that they will not find them too recondite or in parts too technical. Certainly lawyers will find them very elementary. But I do not mean them to make up just a handbook for prospective jurors. I shall try to go deep enough to lay bare the workings of the jury system as it exists in England today. I shall be dealing with the present and not with the past, but I recognize that it is impossible to understand any English institution of any antiquity unless you know

---

Editor's Note: Mr. Gottesman (A.B., Chicago 1954; LL.B., Yale 1957) is the Fellow of the Association.

* Devlin, Sir Patrick, *Trial by Jury*. London: Stevens & Sons Ltd. 1956.

something of its history." Atop this unusual purpose, Devlin builds so well laid out and so carefully documented descriptions and explanations of the English jury system that his apology that "lawyers will find them very elementary" must be largely written off as modesty. He dispassionately examines each of the aspects of the jury trial, and the relation between it and the role of the judge in the trial court, with a frankness and factual foundation that belies the size of the work. All this fits into a sextodecimo volume of one hundred and eighty pages.

There are three parts to the lectures, though each part threads its way chronologically through the whole: history, description of the present system, evaluation. Factual description of the present system of trial by jury in Great Britain never bows in importance to the other two. Within the description of the present system, Devlin focusses on one important field: the relation between the trial judge and the jury. Casting aside the meaningless generalization that "the law is for the judge, the facts for the jury," Devlin substitutes no slick generalization in its place, but details for various classes of actions the kinds of decisions which are actually left to the formulators of the judgment. He points out that what are classically considered decisions on "the facts" and on "the law," are only different steps in the same decision-making process. After shifting from the law to the reasons behind it, he brings the lectures to a logical and valuable conclusion: the matters actually left to the judge are ones that demand the consistency of law, the ones left to the jury those that require the *aequum et bonum* of equity. In each case where the judge controls the decision of the jury, it is because the need of the legal system for a measure of consistency throughout the community demands it. Where the judge is prevented from treading with his burden of precedent and legalism, the case is the rare instance that ought to be left to the common sense, perhaps arbitrarily exercised, of the "twelve good men and true."

If that is the heart of Devlin's treatment, there is no less vital interest lodged in the other parts. The history is straightforward: no fancy or mystique. Devlin makes no apology for the fact that

when Pope Innocent III effectively abolished the trial by ordeal, the English turned to the jury as a trier of fact only in default of more reasonable inventions like those introduced by the more sophisticated jurists on the continent. Too, the well-known fact that the jury was not originally an impartial auditor of evidence, but an inquest of the neighbors of the accused, questioned in turn until twelve could swear from their own knowledge that the accused was either innocent or guilty, does not prevent Devlin from insisting that its retention in changed form is a unique product of English juridical genius. But his ultimate admiration for the jury system doesn't deter him a moment from pointing out its basically eccentric character, how at each step it must in effect be calmed by cooler counsel, "directed," as he says, in the double sense of command and of guidance, toward a proper verdict.

The comparison of the methods of selection of the jury in England and America is as vivid as a courtroom scene. His explanation of the disuse of the *voir dire* in England will shock many an American lawyer. When it became known a few months ago that Mr. Paul Williams, the United States Attorney for the Southern District of New York, had examined the tax returns of talesmen in the trial of Frank Costello in order to secure what he considered a "blue-ribbon" jury, many of the profession were alarmed by the practice. But Devlin tells us that in a trial in England on a charge of obtaining goods by fraud, the defense counsel was not even allowed to ask each juror whether he was a member of any associations for prosecution of persons committing frauds upon tradesmen. The court said, "It is quite a new course to catechise a jury in this way." Even more surprisingly, Devlin points out that barristers are more than content to leave the selection of the jury to the chance of the draw; they prefer an impersonal jury, before whom they can lay their case without knowledge of any of the predispositions or prejudices of the jurymen.

One looks to a little book like this for aphorism, but Devlin never sacrifices accuracy to succinctness. No better examples of

this can be cited than the way in which he illustrates his main point about control of the jury. Some sample quotations:

> The effect of every rule of law is to limit the power of the jury. A man may not be punished because the jury thinks he has done wrong but only if he has committed a crime; a man may not be given damages simply because the jury thinks he deserves compensation. The judges drew the general lines which prescribed the different categories of crimes and of other wrongful acts which carried with them the liability to compensate. But sometimes general lines cannot be drawn without getting too much rigidity; in such cases the judges draw particular lines. But in both cases their function is essentially the same. It is to limit and define the question which the jury has to answer. The more limited the jury's function the greater the chance of uniformity in the administration of justice.

> The essential virtue then of trial by jury is that it is a mode of trial whereby the law, while remaining generally in control of the decision, loosens its grip on it so as to allow it to move nearer than it could otherwise do towards the *aequum et bonum*. Of course the jury cannot be allowed to stray too far from legal principles. Theoretically it is not recognised that they should stray at all: the system works by a practical acceptance of the fact that jurors will be jurors. There are disadvantages attached to this. You cannot move away from the law without sacrificing some of the virtues inherent in law; the further you move away from the law the less predictable the decision becomes. If justice were divine, predictability would be irrelevant: the divine law is clear and simple and an all-seeing judge would in the twinkle of an eye divide the sheep from the goats. But human justice is not concerned simply with good and evil. Justice in civil matters is often simply a process of adjustment which has not got to bestow serious blame on anyone but to determine how the consequences of an unfortunate act ought to be paid for.

Nor does he limit this piercing analysis to the trial alone. In considering the responsibility placed upon the judge when he does deal with questions commonly thought to be questions of "facts," he goes on to examine the powers of the appellate courts in reviewing decisions and the distinctions in such power of review when the case has been tried to the court alone below or to a jury. Item:

> May I now return to the 'combined operation' and describe more closely what I meant by the term? In the Court of Appeal the work of the judge below is not discarded. His finding of the primary facts is the raw material on which the court works. Because he has had the advantage of seeing the

witnesses, he is accepted as the better tribunal for the determination of the primary facts; but the appellate court has a complementary advantage, which makes it the better tribunal—at any rate in a case of any length or complexity—for the determination of the secondary evidence, that is, the drawing of inferences. Throughout the trial the case is alive and kicking: when it gets to the Court of Appeal it is dead. Issues change and develop as the trial proceeds and as witnesses tell their different, and sometimes unexpected, stories; points that left the starting-post apparent winners fall out of the race and dark horses take up the running. Even a short case can be full of surprises. It is not always easy for a judge, who has been in the thick of the thing from the beginning, to select at the end of it the best viewpoint for the case as a whole, especially if he follows the traditional practice of delivering whenever possible an unreserved and extempore judgment simply on the basis of his own note. In the Court of Appeal the material is fixed. Counsel on both sides, having now, as they had not at the trial, the advantage of knowing what evidence the judge has believed and what rejected, can sort out the material at leisure, disregarding the bad points and making the most of the good ones. Little bits of evidence that passed unnoticed at the time are seen in the light of a new definition of issues to become greatly significant. Thus the Court of Appeal is much better equipped than the trial judge for the ascertainment of the secondary facts; the case is, as it were, laid out flat before them and three minds consult together on the right conclusions to be drawn. The joint work to which I referred is the work of the trial judge in determining the primary facts combined with the work of the appellate judges in determining the secondary facts.

Three hundred years ago Blackstone was considered a primer for legal study. Somehow since then the quantity and the very nature of the substantive law have changed so that the "horn-book" is now looked down upon as an authoritative source of legal knowledge. In the great reform movement which swept the law under the aegis of the classical liberals such as Jeremy Bentham and James Mill, the mysterious common law has been replaced by a straight-forward view of the operation of courts and of the judicial process in forming the rules once thought to have been given from on high. Devlin's little book is an exposition of this new view of the law that deserves to become a classic. Unlike Blackstone, he doesn't tell what the law *is;* he tells how "the law" *works.* It is a view of law far more in harmony with a world terrified by dogma than any textbook could ever be. It is a fundamental, functional view of law.

When Sir Henry Maine first expounded the notion in the 19th

century that the judges made the common law, rather than the mysterious science that Blackstone had postulated, conservative minds called Maine a cynic and even an heretic. Some people, like *The Woman's Home Companion's* author in his expose of judges of a few years ago still consider it shocking that judges are no more than mere men. But the charges of cynicism levelled against Maine can never be repeated for Devlin's work. He elevates the functional view of the law to a standard of dignity that could not even have been matched by the sonorous maxims of Blackstone's *Commentaries*. He illuminates and magnifies the law as a function of society:

> The judge's task is not merely to expound the law to the jury but also to offer them an approach to the facts that is based on the ideas that lie behind the law—dispassion, logic and respect for authority. It is not with him, as it may well be with the jury, the only trial in which he will ever take part; he is perhaps less interested than they are in the fates of the individuals concerned and more interested than they in a decision that will conform. Hard cases make bad law; the jury is sometimes too frightened of the hard case and the judge of the bad law. This is the eternal conflict between law in the abstract and the justice of the case—how to do what is best in the individual case and yet preserve the rule. It is out of this dialectic that the just verdict comes. At its best it comes from the coalition of the lay mind with the legal; but if there is conflict, it is the lay mind that predominates. That is what is meant by trial by jury.

Recent Decisions of the United States Supreme Court

By SAMUEL C. BUTLER and DONALD CRONSON

ROWOLDT V. PERFETTO

(December 9, 1957)

This most recent chapter in the law of deportability of Communists well illustrates the ability of the Court "to find a way out from the rigors of a severe statute" (the quoted language is from the dissent of Mr. Justice Harlan).

Congressional efforts to deport Communists go back at least as far as the Act of October 16, 1918, 40 Stat. 1012, which provided that "aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the government of the United States . . . shall be excluded from admission into the United States" and that aliens within the United States who come within the terms of the exclusion should be deported. In 1939, it was decided in *Kessler* v. *Strecker*, 307 U.S. 22, that an alien who had been, but no longer was, a member of the Communist Party could not be deported under the 1918 Act. In 1940 the statute was amended by the Alien Registration Act of 1940, 54 Stat. 673, so as to provide that any alien who was at the time of his entry into the United States, "or has been at any time thereafter" a member of such a group should be deported. In *Harisiades* v. *Shaughnessy*, 342 U.S. 580 (1952), it was held that under the 1940 statute an alien who had been a Communist could constitutionally be deported even though he had severed his ties with the party prior to 1940. See also *Martinez* v. *Neely*, 197 F. 2d 462 (7th Cir. 1952), affirmed by an equally divided Court, 344 U.S. 916 (1953), rehearing denied, 345 U.S. 931.

Under the 1940 Act, it remained necessary in each deportation proceeding involving a Communist or former Communist to prove that the Communist organization in question was, during the period of the alien's membership, an organization possessing the subversive characteristics described in the statute. This problem of proof was obviated by the Internal Security Act of 1950, 64 Stat. 987, 1006 (the McCarran Act), which provided (1) that aliens "who, at any time, shall be or shall have been . . ." members of a Communist organization shall be excluded from admission into the United States, 64 Stat. 1006, and (2) that such aliens should be deported, 64 Stat. 1008. The Act was further amended in 1951 to provide that a person should be considered a "member" of a Communist organization only if his membership or affiliation "is or was voluntary, and shall not include membership or affiliation which is or was (a) when under sixteen years of age,

(b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes." 65 Stat. 28.

When it enacted the Immigration and Nationality Act of 1952, 66 Stat. 163, Congress codified and revamped the statutory provisions concerning exclusion and deportation of Communists. The 1952 Act, for the first time, differentiated between excludable aliens and deportable aliens. The 1952 Act continued to require both exclusion (8 U.S.C. 1182 (a) (28) (C) and deportation (8 U.S.C. 1251 (a) (6) (C)) of "members" of Communist and other totalitarian organizations; however, the alleviating exceptions contained in the 1951 amendment were incorporated into the exclusion provisions *only*. Congress provided that a former member of a Communist organization might, notwithstanding the exclusion provisions, secure admission to the United States if he could establish to the satisfaction of a consular officer and the Attorney General either (i) that his membership was involuntary or came within one of the three exceptions contained in the 1951 Act or (ii) that for five years he had been anti-Communist and his admission would be in the public interest. 8 U.S.C. 1182 (a) (28) (I). The deportation provisions, on the other hand, are suspended only when an alien can establish to the satisfaction of the Attorney General that for a period of at least ten years since becoming a Communist he has been physically present in the United States, that he has during that period been a person of good moral character, and that his deportation would result in "exceptional and extremely unusual hardship." 8 U.S.C. 1254 (a) (5).

In *Galvan* v. *Press*, 347 U.S. 522 (1954), it was held that the 1950 Act required deportation of members or former members of Communist organizations even though they did not subscribe to, or were ignorant of, the subversive objectives of the organizations to which they belonged.

Such was the state of the law when Rowoldt brought habeas corpus proceedings.

Following a hearing before the Immigration authorities, a warrant was issued for Rowoldt's deportation. Rowoldt at that hearing refused to answer whether he had ever been a member of the Communist Party, upon the grounds that he might incriminate himself. However, there was read in evidence a prior examination of Rowoldt in which he had stated (1) that he had joined the Communist Party in 1935, paid dues, and remained a member for about one year; (2) that he was motivated in joining the party by "the fight for bread"; he was unemployed and on relief and "It seemed to me . . . that the Communist Party . . . had one aim—to get something to eat for the people . . ."; (3) that he had worked in a bookstore "run" by the Communist Party, for which services he "didn't get a penny." He also responded to questions concerning the Russian revolution and Communism in a manner indicating some sympathy for what he considered to be the objectives of Communism and some acquaintance with the "party line."

Rowoldt's prayer for a writ of habeas corpus was denied in the District

Court, and the denial was affirmed in the Court of Appeals, which held that "There is no controlling distinction between the Galvan case and Rowoldt's case." 228 F. 2d 109 at 111. After granting certiorari the Supreme Court, in a 5–4 decision, reversed. The majority opinion, per Mr. Justice Frankfurter, reasons that (1) For purposes of the statute an alien was not a member of the Communist Party unless he "committed himself to the Communist Party in consciousness that he was 'joining an organization known as the Communist Party which operates as a distinct and active political organization.'" (2) Such "membership" was not here "established." ". . . the dominating impulse to his 'affiliation' with the Communist Party may well have been wholly devoid of any 'political' implications. To be sure, he was a 'salesman' in a Communist book store, but he 'didn't get a penny there.' Presumably he had to live on something and further inquiry might have elicited that he was getting the necessaries of life for his work in the book store."

The *Rowoldt* decision was to some extent heralded by Mr. Justice Frankfurter's opinion in *Galvan* v. *Press*. He there concluded from his examination of the legislative history of the 1951 amendment that "member," under the 1950 Act, should exclude at least some aliens who were nominally members of the Communist Party, even though they did not come within the literal terms of the three exceptions contained in the 1951 amendment. See 347 U.S. 526–8. The problem perhaps was not directly presented in *Galvan;* but the existence of a potential escape valve in the word "member" might well have made the Court less reluctant to reach the seemingly harsh result of *Galvan*. Justice Frankfurter's *Galvan* dictum that the word "member" contained a potential escape valve was based in large part upon a memorandum of unknown authorship discussing certain problems arising under the 1918 Act as amended which had been inserted into the Congressional Record by Senator McCarran during discussion on the floor of the Senate of the 1951 Act. That memorandum had quoted certain language from *Colyer* v. *Skeffington*, 265 Fed. 17, 72 (D. Mass. 1920), to the effect that the statute did not sanction deportation of aliens who had "accidentally, artificially, or unconsciously" joined the Communist Party. The *Colyer* case (in which Professor Frankfurter had assisted in the defense of the accused aliens, see 265 F. at 22) resulted in a determination (1) that the Communist Party did not advocate the violent overthrow of the Government and (2) if it did, certain of the accused aliens should have been given a fairer hearing before being deported; to quote the headnote in the reported decision (265 F. at 19), "Hearings in proceedings for the deportation of aliens who were members of the Communist Party, but who had become such by transfer of local organizations from the Socialist to the Communist Party, and who had no understanding of the purposes and aims of the latter . . . *held* unfair . . ." (*Colyer* was later reversed on the first point, 277 Fed. 129 (1st Cir. 1922); apparently no appeal was taken on the second point.) The *Colyer*-citing memorandum was a slim reed upon which to fashion an escape clause—particularly slim because it formed an obscure

part of the legislative history of a statute which had since, by express Congressional action, been made inapplicable to deportation proceedings. But Justice Reed was the only member of the Court who questioned Justice Frankfurter's reasoning on this point at the time of the *Galvan* decision. See 347 U.S. at 532.

When *Rowoldt* came along, the *Galvan* language was utilized by Justice Frankfurter as the key with which to open the escape valve in "members."

Mr. Justice Harlan wrote a dissent in which Justices Burton, Clark and Whittaker concurred. His dissent analyzes legislative history to show that "the ameliorating amendment of the 1951 Act, on whose 'spirit' the Court here relies, was motivated solely by the problems of aliens who were being *excluded* from entry into the United States because they had joined totalitarian organizations in *foreign countries*." (The italics are Mr. Justice Harlan's.) He asserts that

> "The Court's holding as to the insufficiency of this record may be interpreted in one of two ways, either (a) that petitioner was not shown to have joined the Communist Party conscious of its character as a political organization, or (b) that if he did so join, his membership was nonetheless excusable under the 1950 Act because it was predominantly motivated by economic necessity."

He concludes that neither view of the opinion renders it reconcilable with *Galvan*.

There is a third, and perhaps significant, view of the Court's decision. The reversal was predicated not upon what was shown in the Immigration hearing, but upon what might have been shown had the matter been the subject of sufficient inquiry. It is possible that the Court has here imposed upon immigration examiners, at least in cases involving ex-Communists, a duty not only to establish facts sufficient to justify a finding of party membership, but also to negate the existence of any facts that could be shown by the alien to justify or compel a contrary finding.

The Court was undoubtedly under great pressure to provide some relaxation of the rigors of the statute. (The administrative relief provided by Congress in the 1952 Act is probably a very limited relief due to the necessity that the alien show "exceptional and extremely unusual hardship." It is interesting, if not instructive, to speculate whether the Supreme Court would have reached the same result in *Rowoldt* had Congress provided a more readily utilizable escape valve for use in deserving cases.) While the *Rowoldt* decision does provide an escape valve, the nature and extent of that escape valve are not yet apparent. Whether it reads a "rule of reason" into the statute, under which "bad" ex-Communists would be "members" while others would not, may be doubted; at the same time, it is equally unlikely that the doctrine therein announced will be applicable in one case only. The *Rowoldt* decision may yet give rise to a vast amount of litigation determining whether a member was a "member."

BENANTI V. UNITED STATES

(December 9, 1957)

In this case the Supreme Court unanimously held that evidence obtained by the use of a state-authorized wiretap, operated solely by local police officers for local reasons, is not admissible in a federal criminal trial.

Mr. Angelo Benanti was an habitue of the Reno Bar in New York City. The New York police, suspecting that he was using the Bar to make telephone calls in connection with dealings in narcotics in violation of state law, obtained, pursuant to New York law, a warrant authorizing them to tap the telephone of the Bar. One night the police overheard a conversation between Benanti and another person in which a shipment of "eleven pieces" was mentioned. Acting on such information, the police stopped a car driven by Benanti's brother. Although no narcotics were found, eleven five-gallon cans of alcohol without the tax stamps required by federal law were discovered. Federal authorities were notified, and the instant proceedings ensued.

At the trial it became clear that the federal agents had in no way participated in the wiretap but, on the other hand, that all the evidence regarding the alcohol was "a fruit of the poisonous tree." *Nardone* v. *United States,* 308 U.S. 338, 341 (1939). In the present case, one of first impression, the Second Circuit unanimously held that the evidence was admissible. *United States* v. *Benanti,* 244 F. 2d 389 (1957). In reaching this decision, Judge Medina relied on *Schwartz* v. *Texas,* 344 U.S. 199 (1952), which holds that evidence obtained by illegal wiretaps by state officers may be admitted in state courts, and on cases decided under the Fourth Amendment which hold that evidence obtained by state officials in illegal searches and seizures may be admitted in federal cases even though the same evidence could not be used if so obtained by federal officials.

Mr. Chief Justice Warren, speaking for the Court, limited the *Schwartz* case strictly to state proceedings and refused to consider the Fourth Amendment analogies suggested by the government and the court below. The decision is based squarely on the wording of Section 605 of the Federal Communications Act, 48 stat. 1103 (1934), 47 U.S.C. § 605 (1952), which "contains an express, absolute prohibition against the divulgence of wiretapping." By thus interpreting the statute to condemn all use in the federal courts of evidence obtained by wiretapping, the Court did not reach any question under the Fourth Amendment.

It was also argued on behalf of the government that there was no violation of Section 605 since the wiretap was authorized by a warrant from the New York Supreme Court issued in accordance with New York law. In rejecting this contention, Mr. Chief Justice Warren pointed out that the Supreme Court has long interpreted Section 605 to ban all wiretaps, federal or state, whether or not made pursuant to a state statute. In *Schwartz* v. *Texas, supra,* for example, the Court, while allowing a state court rule of evidence to stand, assumed without deciding that the action of the state officers was nonetheless a violation of Section 605.

The unanimity of the Court, in which unity of view is not always evident, the wording of Section 605 and the nature of previous judicial interpretations of that Section indicate sufficiently the reasons and logic behind the instant result. Despite the correctness of the *Benanti* ruling, however, in the long run its exact holding may perhaps not be as important as the doubt it appears to cast on a long standing rule concerning the admissibility of evidence in criminal trials.

As Mr. Chief Justice Warren states, the Supreme Court has never ruled on the question of whether evidence obtained solely by state agents in an unreasonable search and seizure is admissible in a federal criminal proceeding. Such evidence, if obtained by federal agents or by state agents acting on behalf of federal authorities, is clearly not admissible in a federal trial. *Weeks* v. *United States,* 232 U.S. 383 (1915). On the other hand, as Judge Medina noted, the several Courts of Appeal have long unanimously held that such evidence, if garnered by state officers completely without the participation of and not on behalf of federal agents, is admissible in the federal courts. *E.g., United States* v. *Moses,* 234 F. 2d 124 (7th Cir. 1956). Moreover, there are a number of Supreme Court cases containing dicta supporting such admission. See, *e.g., Byars* v. *United States,* 273 U.S. 28, 33 (1927), and *Irvine* v. *California,* 347 U.S. 128, 136 (1954).

The way the wind is blowing may perhaps be judged by the fact that the case Mr. Chief Justice Warren cites as his authority for the fact that the question of admissibility of this type of evidence has not yet been passed on by the Supreme Court is *Lustig* v. *United States,* 338 U.S. 74 (1949). There three Justices (including Mr. Justice Douglas) concurred in the result on the ground that the Fourth Amendment bars use in a federal court of evidence obtained by state officers via an illegal search. However, four Justices (including Mr. Justice Burton) dissented in *Lustig* on the ground that such evidence was admissible.

The instant case only bars the use in a federal court of evidence uncovered by state officers by use of a wiretap; the decision does not purport to consider the same question in a search and seizure context. However, as Judge Learned Hand once pointed out with regard to wiretapping in another connection, "it would be a curious result, if a violation of the section [605] were more sweepingly condemned than a violation of the Constitution." *United States* v. *Goldstein,* 120 F. 2d 485, 490 (2d Cir. 1941), *aff'd,* 316 U.S. 114 (1942). The anomalous situation perhaps created by the instant decision is indicated by the *Moses* case cited above. There a man driving a car was stopped by local police for purely local reasons; an illegal search uncovered narcotics in the trunk of the car. This evidence was turned over to federal agents and was used to convict the driver of a federal crime. It can be seen that these facts are almost identical to those in the case at hand, except that, in each case, a different illegal act by the local police officers secured the evidence. In *Moses,* the Seventh Circuit had no difficulty in upholding the admission of the evidence at the federal trial. It may be questioned whether the *Moses* result can henceforth be assumed by the lower federal courts to be the correct one.

It thus appears that federal prosecutors will be well advised in the future to be extremely cautious in basing any case solely upon evidence illegally obtained by state agents, even if such evidence was obtained by an unreasonable search and seizure and not by wiretapping.

RATHBUN V. UNITED STATES

(December 9, 1957)

The defendant was convicted of violating a federal law by transmitting in an interstate communication a threat to injure one Sparks. Defendant had telephoned Sparks and made such threats; Sparks, anticipating further calls from the defendant, invited local police officers to listen to such calls on an extension telephone in Sparks' home. The police officers testified in the federal court as to what they overheard. This testimony was admitted by the district court, which admission was affirmed by the Tenth Circuit and the Supreme Court (Justices Frankfurter and Douglas dissenting).

The Court here resolved a direct conflict previously existing among the Courts of Appeal as to whether listening over an extension phone with the consent of one party to the conversation constitutes an illegal wiretap. Compare *United States* v. *White,* 228 F. 2d 832 (7th Cir. 1956) with *United States* v. *Polakoff,* 112 F. 2d 888 (2d Cir. 1940). Since there was clearly a "divulgence" of the contents of the communication, the Court only considered whether the use of an extension phone is an unauthorized "interception" under Section 605 of the Federal Communications Act. 48 Stat. 1103 (1934), 47 U.S.C. § 605 (1952). The Court held that there was no interception since the words of the Section "must be interpreted in the light of reason and common understanding." Mr. Chief Justice Warren discusses the prevalence of extension telephones, their widespread use by secretaries and other persons and the fact that a person placing a call may reasonably expect that a third person may listen in at the invitation of the other party. In reaching the decision, the majority avoided the pitfalls, into which some lower courts had fallen, of attempting to decide the case on a technical electronic discussion of whether the sounds first reached the ear of the intended receiver or of the third party. Under this standard the decision as to an "interception" for purposes of Section 605 would appear to depend on the determination of a question of pure scientific fact. See, *e.g., Rathbun* v. *United States,* 236 F. 2d 514, 517 (10th Cir. 1956).

Mr. Chief Justice Warren also relied on another portion of Section 605 which appears to permit the recipient of a communication to use it as he sees fit. The Court reiterated a statement first made in *Goldman* v. *United States,* 316 U.S. 129, 133 (1942), that it is not the conversation but the means of communication which is protected by Section 605.

Mr. Justice Frankfurter, in dissent, emphasized the specific words of the statute that "no person not being authorized by the sender" may divulge a communication. He points out that the majority appears to rely on the con-

sent of the receiver whereas the statute only permits divulgence with the consent of the sender.

* * *

While Mr. Justice Frankfurter's strict reading of the words of the statute may be grammatically correct, it would seem that the majority's position is basically sounder. The dissent would permit a secretary to listen-in on an extension and would allow one party to record a conversation without the permission of the other party. It is, of course, also clear that the receiving party would be allowed to make whatever use of such transcripts he desired. In this situation, it seems a fine distinction to allow the receiver to record the conversation and then to give it to the police yet to deny the police the opportunity to listen-in over an extension. If the receiver wishes to let the police know about the conversation, the exact method by which he does so would seem of little importance. In fact, it would seem preferable to permit a recording of the conversation or its overhearing by other persons since the evidence obtained would be more reliable than the recollection of the receiver himself, who would undoubtedly tend to remember the conversation in a way favorable to himself. For these reasons, it is submitted that the majority has the more sensible position.

The decision in the instant case, in addition to resolving the conflict on the exact issue there raised, would appear to approve other cases in which different means of listening-in were employed by the recipient and the police. Thus, the use of a recorder by the police with the consent of the recipient seems proper. *Cf. United States* v. *Hill*, 149 F. Supp. 83 (D. N.Y. 1957). Likewise, the mere listening-in of an officer by holding his ear close to the telephone receiver is indirectly affirmed. *United States* v. *Bookie*, 229 F. 2d 130 (7th Cir. 1956).

Committee Report

COMMITTEE ON PROFESSIONAL ETHICS

OPINION NO. 832

Question: C and her attorney, X, and B and his attorney, A, participated in what both lawyers and both parties understood to be an "off-the-record" conference to settle differences concerning the management and settlement of an estate. Unknown to X, as well as to A and B, C had a tape recording made of the discussions that ensued.

Thereafter C informed X of the tape recording and X has indicated to A that he has such a recording and intends to use it on a motion for a receivership.

On the foregoing facts:

1. Would it be proper for X, in the preparation and submission of the papers to the Court, to refer to the tape recording and to say that it was available for use in a legal proceeding in which X was engaged with the other attorneys?

2. Would X's reference to the recordings in the affidavit, without actually quoting any part of them and without providing opposing counsel with an opportunity to verify the accuracy of the allegations as to their content be proper?

3. Where the defendants and their counsel, as well as X, understood the conference was to be "off-the-record" would X's use of the recordings, in the circumstances stated, be proper?

4. Where X's reference to the recordings in an affidavit could have no other purpose than to promote capitulation by the defendants, would X's use of the recordings be proper?

5. Is X under an obligation to his client to utilize the recordings in the manner described or any other manner, knowing the circumstances under which they had been obtained?

Opinion: Canons 15, 16, 22, 32 and 41 are involved.

Canon 15 provides, in part, as follows:

> "Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class and deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim . . . that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause."
>
> * * *
>
> ". . . In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of

the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client."

Canon 16 provides:

"A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrongdoing the lawyer should terminate their relation."

Cannon 22 provides, in part, as follows:

"The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness."

* * *

"It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes."

* * *

"These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice."

Canon 32 provides, in part, as follows:

"No client, . . . however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect to the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. . . . But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."

Canon 41 provides:

> "When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it; at first by advising his client, and if his client refuses to forego the advantage thus unjustly gained, he should promptly inform the injured person or his counsel, so that they may take appropriate steps."

The Canons or the excerpts from Canons quoted above clearly indicate:

(1) that the lawyer is not burdened with the obligation to do whatever may enable him to succeed in winning his client's cause regardless of the proprieties involved;

(2) that in his dealings with other lawyers as well as with courts, clients and witnesses a lawyer should be candid and fair and above chicanery and deception; and

(3) that the lawyer should use his best efforts to restrain his client from doing those things which the lawyer himself ought not to do.

The Committee is of the opinion that it would have been clearly unprofessional for the lawyer to make or to arrange to have made a recording of an "off-the-record" discussion between the parties and their attorneys (see Opinion 813). We recognize that clients as distinguished from lawyers are not under any compulsion to live within the Canons referred to merely because they are engaged in litigation or in a course of conduct which may lead to litigation. However, we do not believe that all restrictions to the lawyer's use of the recordings in question were removed merely because the client and not the lawyer arranged to make a record of the conversation which all the parties, including both of the lawyers, understood to be "off-the-record." In other words, it is the Committee's view that irrespective of whether the lawyer was himself a party to this act of wrongdoing, he should not help his client take advantage of such wrongdoing by embracing it and using it to promote the client's cause.

In the circumstances stated, the Committee is of the opinion that all five questions should be answered in the negative.

The facts presented here indicate that there was an agreement between the attorneys as well as the parties that the meeting in question was to be an "off-the-record" discussion and the inquiry made of us relates essentially to the extent to which the attorney may rely on the deceit of his client to avoid the consequences of such an agreement. We are of the view that, certainly at the stage of the development of the controversy between B and C inherent in the question as presented, X owes A the duty of respecting the agreement or understanding between them that the conversation between the parties and their counsel was to be "off-the-record"; and that this duty survives any departure from the agreement by X's client. Absent some special circumstances, not included in the inquiry, we believe that both the spirit and the letter of Canons 15, 16, 22 and 32 make appar-

ent the impropriety of any efforts on the part of X to make use of his client's chicanery by referring to the recordings (whether or not such references include quotations from the recordings) in affidavits to be submitted on a motion for receivership. The facts pertinent here clearly distinguish the present inquiry from our earlier Opinions No. 107, 624 and 774. Moreover, if the factual situation in our Opinion 624 were before the Committee, it would find the proposed conduct of trial counsel improper.

We are also of the opinion that Canons 15 and 41 make it apparent that X is under no duty to his client to violate his agreement with his brother lawyer A by making reference to the recordings in question in the circumstances stated.

December 2, 1957

The Library

THE PRESS AND THE COURTS

1951–57*

Allen, F. E. Fair trial and free press: no fundamental clash between the two. 1955. 41 A.B.A.J. 897.

Antieau, C. J. Federalism of freedom. 1954. 42 Ky. L.J. 404–22.

Association of the Bar of the City of New York. Committee on the Bill of Rights. Report on published comment on pending litigation and proposed amendment to section 20 of the canons of professional ethics. New York, 1954. 6p.

Blythin, Edward. The press and the courts. Dec. 1955. Ohio B.J. 1175–78.

Boldt, George H. Should canon 35 of the code of judicial ethics be revised? 1955. 28 Ohio B.J. 345–62.

Brownell, Herbert, Jr. Freedom and responsibility of the press in a free country. 1955. 24 Fordham L. Rev. 178.

Brownell, Herbert, Jr. and Swindler, W. F. Press photographers and the courtroom—canon 35 and freedom of the press. 1955. 35 Neb. L. Rev. 1.

Brucker, H. Free trial vs. the free press. 1957. 20 Tex. B.J. 438.

Brucker, H. Journalism by lawyers. 1955. 29 Conn. B.J. 40–50.

Burch, A. T. Free press and fair trial. 1955. 23 J.B.A. Kan. 352.

Burch, A. T. The press and the administration of justice: traces recent key trends in relations between the press and the courts. 1954. 27 State Gov't. 227–31.

Busser, R. C. Free press and fair trial. 1953. 27 Temp. L. Q. 178–93.

Cedarquist, Wayland B. The case for canon 35. June 1957. Ill. B.J. 698–713.

Chafee, Zechariah, Jr. Growth of freedom of speech and liberty of the press. 1956. 7 Harv. L.S. Bull. 3.

Chenery, W. L. Freedom of the press. Harcourt Brace. 1955. 256p.

"Clear and present danger" rule as applied to contempt by publication. 1952. 1 N.Y.L.S. L. Rev. 63–76.

Constitutional law—courts—Pennsylvania court rule bans out-of-court photography. 1954. 102 U. Pa. L. Rev. 1085–89.

Constitutional law—due process—extra-legal censorship of books by public prosecutor as violation of constitutional guarantee of freedom of the press. 1953. 1 U.C.L.A. L. Rev. 93–4.

Constitutional law—freedom of press and speech—influencing of jurors by publications. 1954. 27 Temp. L.Q. 490–93. 15 U. Pitt. L. Rev. 640–43.

Cooper, Kent. The right to know: an exposition of the evils of news suppression and propaganda. 1956.

* Supplement to checklist in 6 Record 429.

Cross, Harold L. The people's right to know: legal access to public records and proceedings. New York, Colum. Univ. Press. 1953. 405p.

Cross, Harold L. Our free press. How free? Address. 1952. 41 Me. S.B.A. 33–5.

Cullinan, Eustace. The right of newspapers: may they print whatever they choose? 1955. 41 A.B.A.J. 1020–23.

Davis, A. G. Law of defamation: liability of newspapers. 1955. 31 N.Z.L.J. 326.

Davis, Norris G. The press and the law in Texas. Univ. of Tex. 1956.

DeLuca, G. B. A district attorney reports. 1954. 26 N.Y.S. B. Bull. 202–25.

Delehant, John W. Let us retain and enforce canon 35. July 1957. Neb. S.B.J. 85–99.

Dembitz, Nanette. Congressional investigation of newspapermen, authors and others in the opinion field—its legality under the first amendment. 1956. 40 Minn. L.R. 517–60.

Edwin, Emery and Smith, H. L. The press and America. Englewood Cliffs, Prentice-Hall. 1954. 794p.

Fair trial—free press. July 1954. N.Y.S.B. Bull. 202–25.

Fair trial—free press conference. 1953. 10 N.Y. Co. Bull. 170–71. 202–5.

Forer, L. G. Free press and a fair trial. 1953. 39 A.B.A.J. 800–3. 843–49.

Forer, L. G. The 1953 Rose prize essay: a free press and a fair trial. A.B.A.J. 800–3.

Frank, M. A. Newspapers and discrimination in advertising. 1957. 7 Decal. J. 17.

Free press and fair trial—a conflict. 1955. 39 Minn. L. Rev. 431–44.

Fridman, G. H. L. Contempts of court by newspapers. 1957. 24 Sol. 119.

Hanson, Elisha. Two bulwarks of liberty: a free press and an independent judiciary. 1955. 41 A.B.A.J. 217–20. 280–82.

Hanson, Elisha. Canon 35—press, radio and television coverage of the courts. 1955. 16 Ala. L. Rev. 248.

Harvey, J. M. Trial by newspaper. 1957. 42 Mass. L.Q. 8.

Hayes, Arthur Garfield. Let us beware of censorship. 1953. 11 N.Y. Co. B. Bull. 7–51.

Holtzoff, A. Fair trial and freedom of the press—a panel. Opening remarks of moderator. 1956. 19 F.R.D. 16.

Jones, A. F. Fair trial—free press—a panel discussion. An editor views the problem. 1954. 26 N.Y.S.B. Bull. 202–25.

Judicial independence and freedom of the press. 1955. 6 Western Res. L. Rev. 175–82.

Knudson, T. B. Apparent conflict between free press and fair trial comes into focus again. 1955. 23 Hennepin L. Rev. 67–72.

Lassiter, William C. Law and press: a North Carolina guidebook on the legal aspects of news reporting, editing and publishing (for newspaper reporters, editors and publishers). Raleigh. 1954. 215.

Lassiter, William C. Law and press: the legal aspects of news reporting, editing and publishing in North Carolina. Edwards & Broughton. 1956. 262p.

Leibman, Jerry P. Press freedom and libel as defined by Kansas case law. Emporia, Grad. Div., Kans. St. Teach. Coll. 1954. 24p.

Ludwig, F. J. Journalism and justice in criminal law. 1954. 28 St. John's L. Rev. 197–219.

Malkog, Ibrahim N. Les délits contre l'honneur commis par la voie de la presse. Geneva, Etude de droit compáré. 1952. 290p.

Marbut, F. B. Newspaper libel in Pennsylvania. 1955. 59 Dick. L. Rev. 232–38.

McCullough, J. M. Free press and fair trial. 1954. 25 Pa. B.A.Q. 237–44.

Mickelson, S. Electronic point of view. 1953. 11 N.Y. Co. Bull. 7–51.

Musson, A. E. Parliament and the press: an historical survey. 1956. 9 Parl. Affairs. 277–88. 404–17.

Nadelmann, K. H. The newspaper privilege and extortion by abuse of legal process. 1954. 54 Colum. L. Rev. 359–74.

Newspaper libel. 1956. 5 Clev.-Mar. L. Rev. 132.

Ohio. Laws, statutes, etc. Ohio newspaper and publication laws. Columbus, Ohio St. Univ. Press. 1954. 210p.

Otterbourg, E. M. Facts on the free press-fair trial debate. The court rule proposal. 1955. 28 Ohio Bar. 345–62.

Otterbourg, E. M. Fair trial and free press. 1955. 27 N.Y.S.B. Bull. 103–10.

Otterbourg, E. M. and Brucker, H. Fair trial and a free press—a debate. 1955. 29 Conn. B.J. 423.

Otterbourg, E. M. Record of the conference on fair trial and free press—a symposium. Problem is posed. 1953. 11 N.Y. Co. Bull. 7–51.

Otterbourg, E. M. Subject vital to the existence of democracy. 1953. 39 A.B.A.J. 978–980. 1953. 37 J. Am. Jud. Soc'y. 75–80.

Otterbourg, E. M. The right to enforce canon 20. 1956. 13 N.Y. Co. B. Bull. 196.

Parks, Wallace. Applying the right to know under the constitution. 1957. 26 Geo. Wash. L. Rev. 1–22.

Peterson, C. P. The legislatures and the press. 1954. 27 State. Gov't. 223–26.

Press comment on pending criminal trials. 1952. 38 Va. L. Rev. 1057–74.

Powers—newspapers have no standing to challenge judge's order excluding them from trial. 1953. 67 Harv. L. Rev. 344–46.

Press participation in criminal trials. 1955. 33 Chi.-Kent L. Rev. 338.

Rifkind, Simon H. Conflict between press and justice. 1953. 11 N.Y. Co. B. Bull. 7–51.

Schrader, D. P. The state of Iowa v. Robert E. Bednasek; in the reporting of a murder trial by ten newspapers and three major press associations, many errors, prejudicial words and unwarranted speculations were noted. 1951. 28 Jour. Q. 15–23.

Smith, Margaret Chase. Fair trial and free press: pressures exerted on courts and jurors. 1956. 42 A.B.A.J. 341–43.

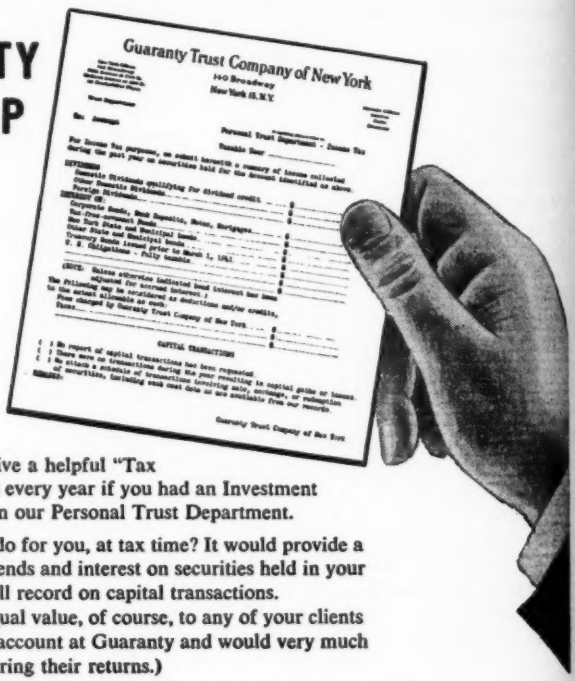
Spingarn, J. H. Newspapers and the pursuit of justice. 1955. 26 Clev. B.A.J. 199.

Stanley, C. M. John Milton's Areopagitica and today's newspapers. 1953. 14 Ala. L. Rev. 328–36.

Stryker, Lloyd Paul. Only courts should try cases. 1953. 11 N.Y. Co. B. Bull. 7–51.
Swindler, William F. Problems of law in journalism. New York, Macmillan. 1955. 551p.
Swope, Herbert Bayard. Question of original guilt. 1953. 11 N.Y. Co. B. Bull. 7–51.
Tennessee Press Association. TPA legal handbook. Knoxville. 1955. 48p.
Terrou, Fernand. Legislation for press, film and radio; comparative study of the main types of regulations governing the information media. Paris, UNESCO. 1951. 420p.
Thayer, Frank. Legal control of the press. 3d ed. Brooklyn, Foundation Press. 1956. 749p.
Tinkham, R. P. The bar and canon 35. 1956. 19 F.R.D. 16.
Tugman, W. M. The people's right to know. 1954. 25 State Gov't. 223–26.
Updike, Stuart N. Where agreement could be found. 1953. N.Y. Co. B. Bull. 7–51.
Vallat, F. A. Practice in Britain is outlined. 1953. 11 N.Y. Co. B. Bull. 7–51.
Waldman, L. The committee states its case. 1954. 26 N.Y.S.B. Bull. 202–25.
Wechsler, James A. Conscience of press vs. conscience of bar. 1953. 11 N.Y. Co. B. Bull. 7–51.
Wiggins, J. B. A newspaperman speaks for the news media. 1956. 42 A.B.A.J. 834.
Wiggins, J. R. The public's right to public trial. 1956. 19 F.R.D. 16.
Williams, Paul W. Danger in a "constitutional gap." 1956. 13 N.Y. Co. B. Bull. 196.
Winters, Glenn R. The photographer's day in court. 1955. J. Am. Jud. Soc. 70–7.
Wolfram, Harold W. Free press, fair trial and the responsibility of the bar. 1954. 1 Crim. L. Rev. 3–17.
Zacherle, H. M. Pre-trial fact press reports as contempt. 1953. 38 Iowa L. Rev. 738–49.

IF TAX BOOKKEEPING INTERFERES WITH YOUR PRACTICE...

GUARANTY CAN HELP YOU



You would receive a helpful "Tax Analysis" from us every year if you had an Investment Service Account in our Personal Trust Department.

What would it do for you, at tax time? It would provide a summary of dividends and interest on securities held in your account, plus a full record on capital transactions. (It would be of equal value, of course, to any of your clients who had such an account at Guaranty and would very much help you in preparing their returns.)

This is one valuable feature of Guaranty Investment Service. If you would like further information, write or phone our Personal Trust Department and we'll be glad to send a descriptive booklet.

We at Guaranty Trust Company like to work with lawyers. We'd be happy to be of service to you.

GUARANTY TRUST COMPANY OF NEW YORK

Capital Funds in Excess of $400,000,000

140 Broadway, New York 15

Fifth Avenue at 44th St., New York 36 Madison Avenue at 60th St., New York 21

40 Rockefeller Plaza, New York 20